(3)

No. 91-889

In The

Supreme Court of the United States

October Term, 1991

FRANK McCOY, EDWARD ERDELATZ AND PIERRE MERLE,

Petitioners,

v.

THE HEARST CORPORATION, A CALIFORNIA CORPORATION, SAN FRANCISCO EXAMINER, RAUL RAMIREZ AND LOWELL BERGMAN,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeal Of The State Of California

MEMORANDUM OPPOSING CERTIORARI

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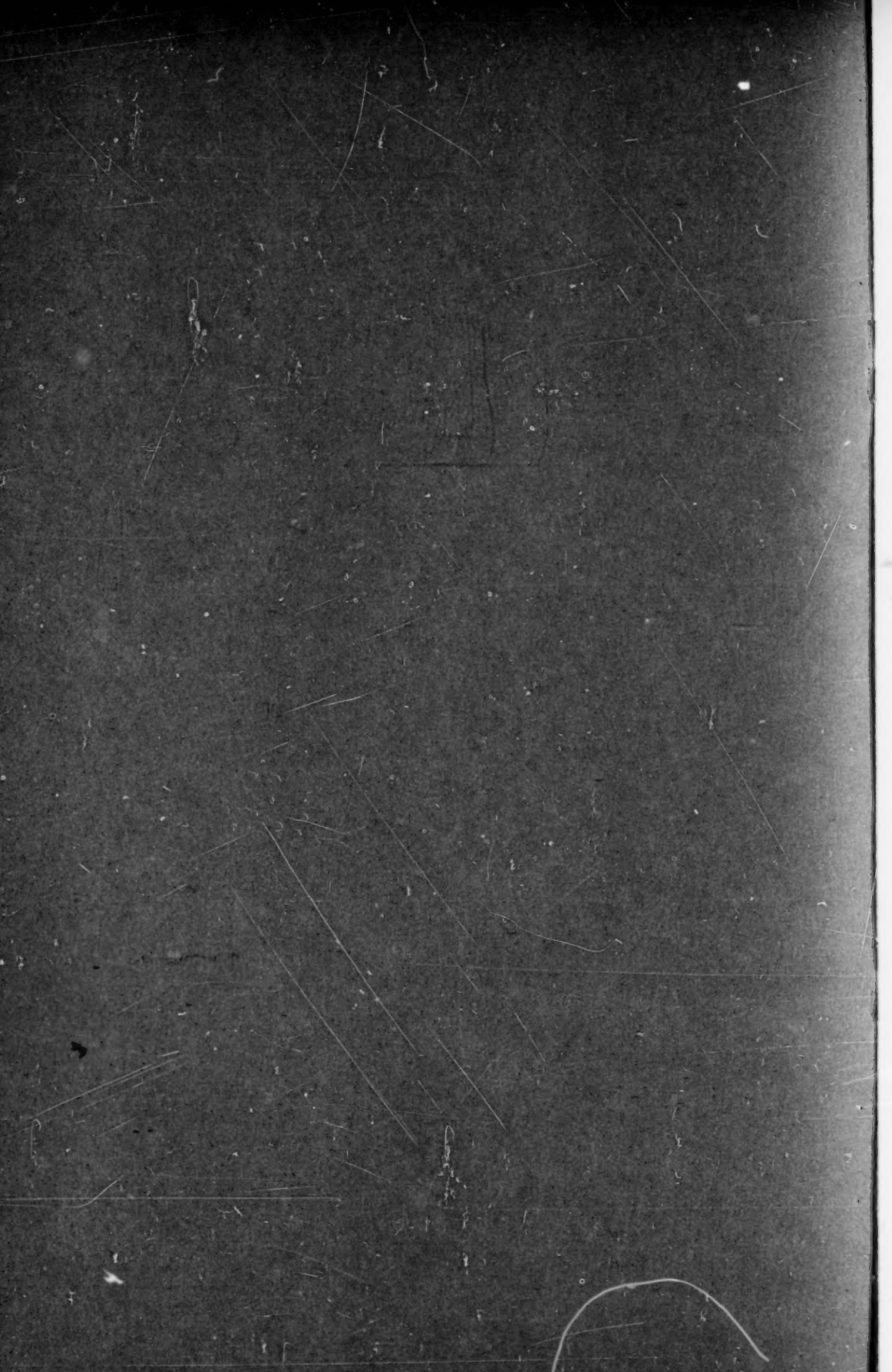

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The petition is frivolous. Petitioners assert that review is necessary because the California Supreme Court supposedly misapplied the standard of independent appellate review mandated by *New York Times v. Sullivan*, 376 U.S. 254 (1964), and *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485 (1984). However, the California

[1] The San Francisco Examiner is a division of The Hearst Corporation ("Hearst"). Hearst owns more than a 50% interest in Condé Nast and National Magazines Distributors, Ltd., Santa Eulalia Mining Company and Sonoma Mines Company.

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Supreme Court's opinion that contains this purported error was issued over five years ago, and petitioners have already unsuccessfully sought certiorari in this Court as to that ruling. *See McCoy v. Hearst Corp.*, 42 Cal.3d 835 (1986), *cert. denied*, 481 U.S. 1041 (1987).

The current petition is not from the California Supreme Court's ruling on the merits of petitioners' defamation claim, but from the state courts' refusal *to reopen* that ruling years after it became final. Petitioners seek review of the California court of appeal's one-sentence order denying a motion made by petitioners in 1991 to reinstate their defamation claim on the ground that the California Supreme Court's ruling in 1986 was erroneous. The court of appeal correctly denied that motion.[2]

(Continued from previous page)

Hearst owns directly or indirectly a 50% or less interest in the following other privately held entities and ventures (the other owners of which may be traded publicly): Hearst/ABC Video Services, Hearst/ABC News Services, Hearst/ABC-NBC, Hearst/ABC-Viacom Entertainment Services, Lifetime Productions, Inc., ESPN, Inc., San Francisco Newspaper Printing Company, Inc., Ellipse International, Ellipse Programme, and New England Cable News Service.

[2] In a separate ruling, of which petitioners do not seek review, the California court of appeal also denied petitioners' independent attempt to reopen the case on the ground that the California Supreme Court's 1986 ruling entitled them to a new trial under a rule of state law announced in *Erlin v. National Union Fire Ins. Co.*, 7 Cal.2d 547 (1936). *See McCoy v. Hearst Corp.*, 227 Cal.App.3d 1657 (1991). The concurring opinion of Justice King upon which petitioners rely was from that ruling, not from the court of appeal's denial of petitioners' motion to recall the remittitur that is at issue here.

Petitioners have no right under either federal or state law to reopen a judgment after it has become final merely because they believe it was incorrectly decided or because they claim it violated their constitutional rights. Petitioners' remedy for any purported error in 1986 was to seek a writ of certiorari from this Court at that time. Petitioners sought such a writ, which the Court denied. There is no basis now for petitioners' second attempt to obtain review in this Court.

The petition for certiorari should be denied.

Dated: December 24, 1991.

Respectfully submitted,

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